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PITNEY HARDIN LLP			MEREK, JOSEPH C	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/480,061
Filing Date: January 10, 2000
Appellant(s): MALIN ET AL.

Ronald E. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/13/05 appealing from the Office action mailed 1/12/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 14 and 16.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

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Appellant's brief presents arguments relating to a rule 83(a) drawing objection.

This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

Upon further consideration the 112 1st paragraph rejection of claims 14 and 16 has been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

5,660,479	MAY et al	8-1997
Re. 33,674	URAMOTO	8-1991
4,759,642	VAN ERDEN et al	7-1988
WO 97/06062	YEAGER	2-1997
JP 62-27389	CHRISTOFF et al	11-1987
4,655,862	CHRISTOFF et al	4-1987

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US 4,655,862 is attached as the English translation of JP 62-27389. The two documents are in the same patent family. See attached printout of the patent family from Derwent.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al (5,660,479) in view of Uramoto (RE 33,674). Regarding claim 14, May et al as seen in Fig. 6 and 7 teaches a hermetically sealed package with male and female zipper strips but does not teach the how hermetic package is formed. Uramoto as seen in Figs. 2-5, teaches a similar bag with zipper profiles where the package is made by sealing the side edges of the bag and sealing the bottom edge of the bag. It would have been obvious to employ the side seals and bottom seal of Uramoto in the bag of May et al to provide a simple way to form the package. Moreover, it would have been obvious to employ the seals of Uramoto in the package of May et al to provide the hermetic sealed form as required in Col. 2 lines 66 and 67 of May et al. The side seals in the modified package of May et al are considered lap seals since they have overlapping material. As seen in the drawings the seals are substantially perpendicular to the zipper profiles. See Fig. Figure 2 and 4, of Uramoto where the side end seals are 12a and 12b. Uramoto also shows the bottom closed by seal 16. The top of May et al is sealed as seen in Fig. 6 and 7.

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al (US 5,660,479) in view of Yeager (WO 97/06062) or JP 62-273839. Regarding claim 14, May et al as seen in Figs. 6 and 7 teaches a hermetically sealed package with male and female zipper strips but does not teach how the hermetic package is formed. Yeager and JP 62-273839 as seen Fig. 1, teach a similar bag with zipper profiles where the bag is made with a single central lap or fin seal and a bottom seal. It would have been obvious to employ central seal and bottom seal of either Yeager or JP 62-273839 so that the bags could be rapidly formed, filled, and sealed on a FFS (form fill and seal) machine as seen in Fig. 5 of JP 62-273839. Moreover, it would have been obvious to employ the seals of Yeager or JP 62-273839 to provide the hermetic form as required in Col. 2 lines 66 and 67 of May et al. As seen in Fig. 1 of Yeager and JP 62-27389 the central seal is substantially perpendicular to the zipper profiles.

(10) Response to Argument

Applicant argues that the side seals are not fin or lap seals and that the side seals do not satisfy the "formed in a central location thereof". It is the examiners position that the side seals extend through the horizontal center of the walls and part of the seal is centrally located on the wall. The side seals overlap and satisfy the lap limitations. Applicant argues that the Uramoto reference does not teach a fin or lap seal extending perpendicular to the zipper from the top to the bottom of the package. Claims 14 and 16 do not require that the fin or lap seal extend from the top to the bottom of the package. The claims do not require the seal to extend from the top to the bottom of the

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bag. Thought the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. As seen in the Figures of Uramoto the zipper profiles are perpendicular to the side seals.

Applicant argues that since the references to May et al and Uramoto teach side seals that it would not have been obvious to make the bags or packages in the manner as taught by Yeager or JP 62-27389. It is the examiners position that one of ordinary skill in the art to employ the lap seals of Yeager or JP 62-27389 in the bag of May et al to allow for the bags or packages to be formed rapidly on an FFS machine as seen in Fig. 5 of JP 62-27389. The reference to Van Erden et al (US 4,759,642) is cited as extrinsic evidence that it is known to make zipper bags or packages with either side seals or with a fin or lap seal.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joseph C. Merck

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Conferees:


Nathan Newhouse, SPE


Des Pascua, Primary Examiner